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SIPDIS

SENSITIVE

STATE FOR EAP/PMBS, S/CT FOR CHANDLER, INR/EAP/SEA,  
INL/C/CP, AND INL/AEE FOR PRAHAR, KAPOYOS, AND MCKAY  
BANGKOK FOR ILEA  
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E.O. 12958: N/A

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SUBJECT: STREAMLINING TERRORISM PROSECUTIONS IN THE  
PHILIPPINES

1. (U) This is an action request -- please see paras 7-8.

2. (SBU) Summary. One of the key tasks facing the Philippines (GRP) in its struggle against terrorism is streamlining the currently excessive length and unwieldy number of defendants in terrorism trials. The Mission's Law Enforcement Working Group believes that a minor adjustment of existing programs for prosecutors earmarked (but not yet spent) for FY 2003 and 2004 by the Bureau of International Narcotics and Law Enforcement Affairs (INL) could have a significant immediate -- as well as long-term -- impact. Training in caseload management and evidence rules could strengthen the rule of law and energize the GRP's ability to operate within the international counterterrorism legal framework. Redirecting a planned (but not implemented) FY 2003 "Prosecutorial Assessment for the Autonomous Region of Muslim Mindanao (ARMM)" to concentrate instead on GRP terrorism prosecutions could invigorate the GRP's counterterrorism policies and help the USG and other international donors target and mobilize future law enforcement assistance. The estimated \$80,000 cost of this minor adjustment of INL spending for the Philippines (4.25% of the total \$2 million INL FY 2004 budget) would be minimal in relation to its potential favorable impact on the GWOT. End Summary.

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JUDGES AND PROSECUTORS OVERWHELMED  
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3. (SBU) Terrorist arrests in the Philippines typically are highly publicized, but then suspects disappear into GRP jails and prisons for years. When cases finally go to trial, proceedings often consist of dozens or sometimes hundreds of defendants, and frequently take years to conclude. The slow pace of prosecution in the GRP's high-profile terrorism cases (as detailed in the "GRP Terrorism Prosecution Matrix" on the Mission's SIPRNET site) not only inhibits the GRP's full and effective cooperation with international efforts to catch and punish terrorists, but also reinforces perceptions (within and outside of the Philippines) of the weakness of the rule of law here.

4. (SBU) The GRP assigns high-profile/high-value terrorist cases to the Department of Justice's (PDOJ) Anti-Terrorism and National Security Cases Task Force in Manila for prosecution. The majority of terrorism trials meet for one four-hour session each week, with the rest meeting bi-weekly. While PDOJ prosecutors pride themselves as always prepared for trial, delays on the part of defense counsel are common. Courts often permit private defense lawyers to withdraw mid-trial once the defendants can no longer pay attorney retainer fees, necessitating the search for a private attorney to work pro bono, or the assignment of a public defender; both choices result in additional delays while the new defense counsel reviews court documents. Other delays come from venue changes. Given the surprisingly common lack of understanding by judges and prosecutors of Philippine evidence codes, the proceedings often become snarled over the admissibility of documents or testimony.

5. (SBU) The five prosecutors responsible for all pending terrorist cases in Manila are in court generally every day, with the exception of two Tuesdays a month. Their trial caseload is far too large for them and the four judges hearing these cases. An ever larger pretrial caseload compounds the problem. Prosecutors are frustrated because the cases are unwieldy, given the large number of defendants combined with the slowness of the proceedings. PDOJ prosecutors realize that they should try a smaller number of higher value defendants and work plea arrangements in which minor suspects plead guilty to lesser offenses. Mission believes that these prosecutors would welcome outside experts to provide the technical assistance and training to advise on these changes.

6. (SBU) Several PDOJ prosecutors have already attended courses at the International Law Enforcement Academies (ILEA)

in Bangkok and Roswell, NM. PDOJ prosecutors have also participated in INL-sponsored conferences in Bangkok. Filipino judges and prosecutors have taken part in INR-sponsored symposia at the Southeast Asia Regional Center for Counterterrorism (SEARCCT) in Kuala Lumpur. Despite the low pay and the inherent risks of their jobs, they are capable and hard working, but need outside assistance to provide the impetus (and the bureaucratic cover) for reform. Based on our close and productive cooperation with our GRP counterparts, we believe that it is possible to improve performance within the existing judicial framework to speed up the overall process and ensure more effective terrorism prosecutions.

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ACTION REQUEST  
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17. (SBU) Mission requests the immediate release of \$60,000 in INL FY 2004 funds earmarked (but not yet spent) for the Administration of Justice to allow the Mission (in coordination with INL/AE and the U.S. Department of Justice) to conduct the following:

I. A one-week course for all terrorism prosecutors on caseload management to a) prioritize cases; b) plead cases out; c) charge cases; d) organize cases; and, e) evaluate cases. This would include dividing large numbers of defendants (for the four Manila cases with more than 10 defendants) into smaller, more manageable groups, then quickly taking to trial only the most culpable defendants (no more than 10 to 15) first. Later, after the convictions of the first batch, prosecutors could attempt to offer plea agreements to lesser defendants.

II. A one-week course in evidence for prosecutors and judges. While Philippine and U.S. evidence codes are similar, lawyers and judges here lack strong knowledge on how and why the evidence codes work and how to apply them in court. In-depth training on understanding why evidence is admissible or inadmissible is essential.

III. Provide USG technical assistance to the Supreme Court to develop ethical standards for the conduct of defense attorneys in terrorism cases.

18. (SBU) Mission notes that the FY 03 "Prosecutorial Assessment for the Autonomous Region of Muslim Mindanao (ARMM)" budgeted at \$25,000 has not yet been implemented. Mission proposes the reconfiguration of the ARMM assessment into an "Anti-Terrorism Prosecutions Assessment" that would allow resident U.S. Department of Justice Attache and an OPDAT-selected technical expert to conduct a thorough assessment of the GRP's anti-terrorism prosecutorial functions and, with GRP input, develop an action plan to reduce the current case backlog as well as a strategic plan for future prosecutions. The assessment would also evaluate the technical needs of the GRP's Department of Justice's Anti-Terrorism & National Security Cases Task Force and local ARMM prosecutors to identify a modest package of computer hardware and software as possible grant aid for remaining INL FY 2004 funds or for solicitation from other USG and donor nation law-enforcement/security assistance funding streams.

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